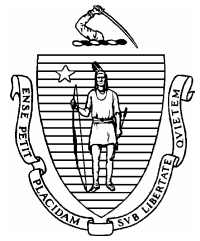


Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss

COMMISSION ADJUDICATORY
DOCKET NO. 715

IN THE MATTER
OF
PAUL R. MURPHY

DISPOSITION AGREEMENT

The State Ethics Commission and Paul R. Murphy ("Murphy") enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On November 12, 2003, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Murphy. The Commission has concluded its inquiry and, on August 3, 2004, found reasonable cause to believe that Murphy violated G.L. c. 268A, §§ 19 and 23.

The Commission and Murphy now agree to the following findings of fact and conclusions of law:

-Background Facts-

Murphy was during the time relevant a City of Salem (the "City") police captain. As such, Murphy was a municipal employee as that term is defined in G.L. c. 268A, §1. In September 2003 Murphy was terminated as a Salem police officer. He is currently appealing that termination with the Civil Service Commission and is now retired.

1. Murphy was the Salem Police Department's (the "Department") executive officer. As such he was second in command after the chief.
2. During the time relevant, Murphy's daughter Patricia was first a reserve officer and then permanent patrol officer in the Department. In June 2004 Patricia was terminated as a Salem Police officer. She, too, is currently appealing that termination with the Civil Service Commission.

Intervening in Police Academy Issue

-Findings of Fact-

3. In early July 2000, the Department received authorization to hire three full-time permanent police officers. Successful completion of the police academy is a prerequisite for such appointments. The next scheduled academy began on July 31, 2000. The Department screened five reserve officers, including Patricia, to fill the three slots. Patricia would have been selected because of her ranking on the civil service list if she successfully passed the screening. (The screening included background medical and psychological clearance requirements as well as a physical agility test.)

4. On July 11, 2000, Lt. Mary Butler, who was overseeing the screenings of the five reserve officers (the "Lieutenant"), informed Patricia that she was missing medical information that was necessary to clear her to take the physical agility test. Patricia was scheduled to take the test the next day, July 12, 2000. Passing the physical agility test is required for the police academy. The lieutenant informed Patricia that Patricia needed to obtain that information herself immediately.

5. Shortly thereafter, Patricia told Murphy about the need for information.

6. The Department's standard practice was to have the candidate get the records.

7. On July 12, 2000, Murphy came into the Lieutenant's office to complain that the Department should be doing more to assist the candidates than was being done. Because of Murphy's intervention, the Lieutenant agreed to have the Department try to get the records.

8. The records were obtained by Patricia and Patricia took and passed the physical agility test on July 12, 2000.

9. The Department has all reserve officer applicants undergo a psychological evaluation before they become reserve officers. In addition, the Department had recently adopted a policy requiring that the psychological evaluation be updated for any reserve officer who was going to go to the police academy if the existing evaluation was more than six months old.

10. On July 15, 2000, Patricia sat for her evaluation update with the Department's psychologist. Her previous evaluation was done five years earlier when she became a reserve officer.

11. The Department's psychologist decided he needed records from two doctors who previously treated Patricia before he would approve Patricia going to the academy. The Department had Patricia execute releases for her records from these doctors.

12. The Department had set July 19, 2000 as the deadline for candidates to have submitted all their necessary information for the academy.

13. Neither the Lieutenant nor Patricia was able to timely obtain the necessary information. Consequently, on July 19, 2000, the Lieutenant informed Patricia that she would not be attending the July 2000 police academy, and therefore would not receive one of the full-time appointments. Meanwhile, Patricia had quit her job in the private sector in anticipation of attending the academy and receiving a full-time appointment.

14. Shortly after learning that she would not be attending the police academy, Patricia informed Murphy that she had just been notified that she would not be attending the academy.

15. Murphy, as the Department executive officer, was acting-chief at the time because the Chief was on vacation.

16. Murphy immediately called the Lieutenant and complained about how the Department was handling the matter. Murphy observed that the Department had made exceptions to various certification requirements in the past.

17. Murphy then called the Chief, who was in Maine on vacation and communicated a similar complaint, again observing that exceptions had been previously granted.

18. According to Murphy, he does not recall calling Chief St. Pierre in Maine on the evening of July 19, 2000.

19. Chief St. Pierre remembers Murphy calling him in Maine during the evening of July 19, 2000. The Lieutenant also states that, after she had called the Chief in Maine on July 19, 2000, the Chief later called her that same evening and told her that Murphy had called him.

20. The Department phone records show that on July 19, 2000, two calls were placed from the Department to Chief St. Pierre's vacation home in Maine. The first occurred at 5:55 p.m. and lasted for 11 minutes. The second occurred at 8:22 p.m. and lasted for 17 minutes.

21. The Lieutenant and the Chief each inferred from their respective telephone conversations with Murphy that Murphy was asking that the decision be changed. The Chief and the Lieutenant based their conclusion on the fact that Murphy referenced prior accommodations having been made for candidates in similar circumstances.

22. Becoming a full-time permanent police officer would have given Patricia a pay increase and enhanced benefits in comparison with being a reserve officer.

-Conclusions of Law-

23. Section 19 prohibits a municipal employee from participating¹ as such in a particular matter² in which to his knowledge he or an immediate family³ member, such as a daughter, has a financial interest.

24. As set forth above, the Department's decisions regarding who would be sent to the police academy and under what conditions were particular matters.

25. Murphy participated as a police captain in each of those particular matters by, as described above, (a) on July 12, 2000 asking the Lieutenant to assist Patricia in obtaining the medical information, and (b) by on July 19, 2000 communicating concerns to both the Lieutenant and the Chief about the decision that Patricia would not be allowed to attend the police academy and asking each of them to make an exception to the psychological evaluation update requirement so that Patricia could attend that academy. Patricia had a financial interest in these decisions because her becoming a permanent police officer would involve a salary increase and other enhanced benefits. Murphy knew of those financial interests when he so participated.

26. As his daughter, Patricia was an immediate family member within the meaning of § 19.

27. Therefore, by participating as a police captain in particular matters involving his daughter's financial interests, Murphy violated § 19 on each such occasion.

May 2001 Seniority Issue

-Findings of Fact-

28. In April 2001, Patricia and another officer entered the police academy. The Chief planned to make three full-time permanent appointments in or about May 2001. He planned to appoint Patricia and the other officer attending the academy, and a third officer who had just been appointed a reserve officer, but

had already successfully completed the academy. Had the Chief made the three appointments in May 2001, this third officer would have had seniority rights over Patricia. The effective date of his appointment would have been immediate because he had already completed the academy. Patricia's and the other officer's full-time appointment would not have taken effect until they successfully completed the academy, which would not be until approximately September of 2001.

29. In or about May 2001 Murphy intervened with the Chief just prior to the Chief making the appointments. Murphy questioned the fairness of giving the third officer (who had completed the academy) seniority over Patricia, since Patricia had been a reserve officer for five years and the third officer had just been appointed a reserve officer. The Chief found Murphy's fairness argument to be persuasive. Consequently, the Chief held off making the appointments until October 2001, with all three officers having an effective appointment date of September 11, 2001. The effect of this was that Patricia, who was ranked higher on the civil service list than the third officer, became senior to that officer.

30. Seniority is important because shift bidding, overtime, details, and layoffs are all determined based on seniority. Therefore, Patricia had a financial interest in this decision by the Chief as to when he made these appointments.

31. Murphy knew of Patricia's financial interest in the appointment decision as described above at the time he asked the Chief to change his plans and defer the appointments.

-Conclusions of Law-

32. The Chief's decision as to when to appoint the three officers was a particular matter.

33. Murphy participated in that matter by asking the Chief to defer the decision.

34. Patricia was an immediate family member within the meaning of §19.

35. Patricia had a financial interest in the particular matter because she would receive increased pay and benefits.

36. Murphy knew of this interest when he so participated.

37. Therefore, by so acting Murphy violated § 19.

Accessing Confidential Information

-Findings of Fact-

38. In April 2002, Patricia filed a harassment complaint against two superior officers regarding comments they made about Patricia dating another police officer. The Department's sexual harassment officer, Lt. Mary Butler, conducted an internal investigation of the complaint. In a report dated April 15, 2001, the Lieutenant substantiated the facts in the complaint, but found that the conduct did not rise to the level of sexual harassment.

39. On April 29, 2002, all captains were given a copy of the Lieutenant's report.

40. On April 30, 2002, the Chief and Murphy met to discuss the Lieutenant's report.

41. The Patrol Division Commander, who was a police captain (the "Captain"), also investigated the complaint to determine whether the two officers were following proper supervisory procedures in dealing with Patricia. In early May 2002 he issued a report finding there were supervisory deficiencies.

42. Sometime after this April 30th meeting, Murphy accessed the Lieutenant's investigative file regarding Patricia's complaint by using his master key to enter the Lieutenant's locked office. He did so to see if he could uncover any evidence that the Lieutenant was biased against Patricia. Murphy found one document in the Lieutenant's file that he copied by hand, indicating that the Lieutenant was against restoring to Patricia certain vacation days taken while the harassment investigation was pending. Murphy believed this demonstrated bias by the Lieutenant against Patricia. Murphy also took note of the presence in the file of the Chief's May 10, 2002, letter to Patricia informing her of the results of the Captain's internal investigation. Murphy did not remove any documents from the file.

43. On June 4th and June 5, 2002, Murphy spoke to the Chief about Patricia's complaint. Murphy questioned the Lieutenant's objectivity and possible bias against Patricia. Murphy also observed that Patricia never received the Chief's May 10, 2002 letter. The Chief questioned Murphy about his knowing this information. Murphy stated that he learned the information by reviewing the Lieutenant's investigative file.

44. The sexual harassment file was confidential pursuant to the Department's Sexual Harassment Policy. Murphy had no legitimate official reason for accessing the file. He did so for personal reasons.

-Conclusions of Law-

45. Section 23(b)(2) prohibits a municipal employee from knowingly or with reason to know using or attempting to use his official position to secure an unwarranted privilege of substantial value not otherwise properly available to similarly situated people.

46. Obtaining confidential police department personnel or investigative information for a personal purpose – to be used in trying to advance or protect a family member's interests – is an unwarranted privilege of indeterminable but substantial value.

47. Murphy used his official position as executive officer to obtain this access.

48. This privilege was not otherwise properly available (for private purposes) to similarly situated officers.

49. Murphy knew or had reason to know that accessing the confidential file by using his official position was a privilege not otherwise properly available (for private purposes) to similarly situated officers.

50. Therefore, Murphy violated § 23(b)(2) by so acting.

-Resolution-

In view of the foregoing violations of G.L. c. 268A by Murphy, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Murphy:

- (1) that Murphy pay to the Commission the sum of \$6,000 as a civil penalty for his several violations of G.L. c. 268A; and

- (2) that Murphy waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: June 27, 2005

¹ "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

² "Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

³ "Immediate family," the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, § 1(e).